

Appeal from a decision of the Minerals Management Service which deemed an appeal pursuant to 30 CFR Part 290 to be untimely.

Reversed.

1. Evidence: Presumptions

The presumption that the datestamp affixed to a certified mail return receipt card by a U.S. Postal Service employee was the date the item was delivered can be rebutted by an official Postal Service document showing the actual date of delivery and a statement by the Postal Service that delivery occurred on the date on the document rather than the date indicated by the return receipt card.

APPEARANCES: Deborah Bahn Price, Esq., George J. Domas, Esq., New Orleans, Louisiana, for appellant; Peter J. Schaumberg, Esq., Geoffrey Heath, Esq., Howard W. Chalker, Esq., Office of the Solicitor, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Enstar Corporation (Enstar) has appealed from a June 23, 1987, decision of the Minerals Management Service (MMS), which deemed an appeal to the Director of MMS pursuant to 30 CFR Part 290 to be untimely because it had not been received within 30 days of Enstar's receipt of an April 14, 1987, order directing Enstar to pay additional royalties. MMS based its decision on evidence that the certified mail return receipt card, article number P 247 455 390, indicated a copy of the April 14 order had been received by Enstar on April 20, and the notice of appeal to MMS was filed with MMS on May 22, 1987.

The certified mail return receipt card (receipt number P 247 455 390) is signed and dated April 20, 1987, indicating that the article in question was delivered by the Postal Service on that date. In that the notice of appeal was filed on May 22, 1987, the notice of appeal was filed 32 days after receipt, unless it can be shown that the date on the return receipt card is in error.

In its statement of reasons to the Board, Enstar contends that the factual basis for dismissal of its appeal is in error. Enstar asserts that its appeal was timely filed with MMS because Enstar's authorized agent,

Walter J. Messenger Service, took delivery of the envelope containing the MMS order on April 23, 1987. Appellant alleges that neither Enstar nor its authorized representative took delivery of the certified mail article on April 20, 1987. Appellant argues that it cannot identify the signature appearing on the card as belonging to any of its employees or Walter J. Messenger Service's employees.

It is well established that an appeal pursuant to 30 CFR 290.3(a) is properly dismissed where the appellant failed to file the notice of appeal in the proper office within 30 days from service of the decision appealed from. Pennzoil Oil & Gas Inc., 61 IBLA 308 (1982), and cases cited. MMS' record indicates that the decision appealed from was delivered to Enstar's address of record on April 20, 1987. Enstar disputes that fact, bringing into contention an act of the Postal Service. There is a presumption of regularity which supports the acts of public officers and, in the absence of clear evidence to the contrary, they are presumed to have properly discharged their official duties. Legille v. Dahn, 544 F.2d 1 (D.C. Cir. 1976); Wallace Creek Sawmills, 97 IBLA 177 (1987).

Appellant contests the date of delivery shown by the postmark stamped on the return receipt card. In support of its contention, Enstar submitted a photocopy of a page drawn from the Postal Service Form Delivery Book, PS Form 3833, as proof that service was made on April 23, rather than April 20. In instances of contested postmarks which were attached by Postal Service employees, the Board has held that, as a result of the presumption of regularity, the Postal Service-attached postmark will be presumed to be the official date in the absence of satisfactory corroborating evidence. See Max W. Young, 60 IBLA 224, 226 (1981). The burden is therefore upon the party contesting the postmark to provide evidence that the stamped date is erroneous. Id.

In its answer to appellant's statement of reasons, MMS asserts that, in absence of proof to the contrary, it must be assumed that Enstar's agent signed the certified mail return receipt (green) card. MMS argues a presumption of regularity in favor of the act of a Postal Service employee who postmarked the green card with an April 20 date as the date of delivery. MMS contends that someone received the subject order on April 20 and since appellant has not shown delivery to other than it or its agent, the appeal received on May 22 must be dismissed in accordance with 30 CFR 290.3(a).

[1] The Board has held that the letter from postal authorities verifying that the postmark was incorrectly attached will overcome the pre-sumption attached to the date shown on the postmark. E.g., David W. Gregg, 32 IBLA 293 (1977); Paul D. Beaird, Jr., 26 IBLA 79 (1976). On appeal, Enstar argues that the "Daily Record Form" for the Houston, Texas, post office reflects that certified mail item P 247 455 390 had not been delivered until April 23. As previously noted, a copy of that document was submitted by Enstar with its statement of reasons. However, the date on the document for item P 247 455 390 was illegible. In a March 7, 1988, letter

to the Postmaster, Houston, Texas, the Board requested a legible copy of the Daily Record Form and asked the Postmaster's assistance in resolving the question raised by Enstar regarding the date of delivery.

In response, a legible copy of the Daily Record Form was submitted under cover of a letter which stated: "I have enclosed a copy of an official page of the Firm [sic] Delivery Book, PS Form 3883. This is the actual date certified letter, article PS 247 455 390 was delivered." Without question, the enclosure shows that the date of delivery of certified mail article P 247 455 390 was April 23, 1987. In further evidence that the item listed by the Postal Service is the document in issue, the identified zip code of origin is 80217, MMS' zip code. Thus, the presumption that the date of delivery was April 20 has been rebutted.

MMS argues that the signature on the receipt card is sufficient evidence of service to Enstar. The gravamen of this argument is that the green card was returned to MMS on April 22, 1987. Thus, if the signature attached belonged to Enstar or its agent, then delivery occurred before April 23. Appellant contends that it cannot be presumed that it or its agent signed the card. For the same reasons discussed above, we must hold that the presumption that the official act of the Postal Service was regular with respect to the signature on the card is rebutted. The correct signature could not appear on the return receipt card if the card was returned to MMS on April 22 but the article itself was not presented by the Postal Service for delivery until April 23. We must infer that the green card was not attached to the certified mail article, but instead was processed under unrelated circumstances.

Based upon the evidence before us, we conclude that service of MMS' April 14 order did not occur until April 23. Thus, the appeal received May 22 was timely.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed, and the case is remanded to MMS.

R. W. Mullen
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Anita Vogt
Administrative Judge
Alternate Member